THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.24247 OF 2000

DATED: 10-07-2007

BETWEEN

Sri Ashok Setti,
S/o. Sundar Kumar Setti,
R/o. Zaheerabad,
Medak District and another.

...PETITIONERS

AND

The State of Andhra Pradesh,
Rep. by Secretary, Excise
Department, Secretariat,
Hyderabad and another.

...RESPONDENTS

ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader for Home appearing for the respondents.

2. Petitioners submit that the fist petitioner was the licensee in respect of Ashok Wines, Zaheerabad and the second petitioner is the authorized representative to sell liquor at the said premises.

They further submit that the Sub-Inspector of Police, Zaheerabad registered a case in Cr.No.3 of 2000 under Section 36 (b) and (d) of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') against them alleging that when inspection was made in the presence of two panchas in respect of the said shop, two persons were found consuming liquor in the shop, who on seeing the police left the liquor bottles and went away. They further submit

that the left over liquor along with two glasses were also found in the shop, based on the said averments the aforesaid case has been registered.

3. The relevant portions of Section 36(1)(b) and (d) of the Act are extracted as follows:

> "**36. Penalty for misconduct of licensees, etc.**: -
> (1) Whoever being the holder of a licence or permit granted or issued under this Act or being in the employ of such holder and acting on his behalf -
> (a).....
> (b) willfully does or omits to do anything in breach of any of the conditions of his licence or permit not otherwise provided in this Act; or
> (c).....
> (d) permits drunkenness, disorderly conduct, riot or gaming in any place wherein any intoxicant is sold or manufactured; or"

4. As per the terms and conditions of the licence and the rules made under the Act the licensee is not entitled to permit consuming liquor in the shop, therefore, it cannot be said that there was no breach of conditions of licence or the provisions of the Act and the rules made thereunder. Therefore, I am of the opinion that as per the aforesaid averments the penal action under Section 36(b) attracts. Insofar as Section 36 (d) of the Act is concerned, the allegation is that two persons were found drinking liquor in the shop, who on seeing the police went away, but there is no allegation about the petitioners permitting the two persons to their shop in a state of drunkenness. Mere drinking is different from drunkenness. In a place where intoxicant is permitted to be sold, the licensee of such place cannot permit drunkenness, disorderly conduct, riot or gaming. In the instant case, except the allegation that two persons were found drinking in the shop there was no allegation about permitting drunkenness.

5. This Court in the case of **A. SUBRAHMANYAM v. PROHIBITION AND EXCISE INSPECTOR**[1] held that a person merely found drinking liquor cannot be said to be in a state of drunkenness, unless, the drinking results in some perceivable changes in his conduct, which may be considered other than normal. In the instant case, in fact, as per the

allegations in the FIR, two persons found drinking in the shop left the shop on seeing the police, therefore, there was no occasion to make a note of the state of mind of the persons as to whether they were in a state of drunkenness. Therefore, I am of the opinion that even if the contents of the FIR are taken into consideration and accepted as they are, the said offence will not attract Section 36(d) of the Act whereas a case is made out under Section 36(b) of the Act against the petitioners.

6. Accordingly, the proceedings insofar as the offence under Section 36(d) of the Act in Cr.No.3 of 2000 are quashed. However, the investigation may be completed and the petitioners may be prosecuted for the offence under Section 36(b) of the Act.

The writ petition is accordingly allowed in part. There shall be no order as to costs.

_____

V. ESWARAIAH, J

July 10, 2007
DSK

---

[1] 2000 (1) ALT (Crl.) 567